

**TESTIMONY OF  
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ON**

**MAGNUSON-STEVENSON ACT NATIONAL STANDARDS AND AMENDMENT 13 TO  
THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN**

**BEFORE THE  
SUBCOMMITTEE ON OCEANS, FISHERIES, AND COAST GUARD  
COMMERCE, SCIENCE, AND TRANSPORTATION COMMITTEE  
U.S. SENATE  
WASHINGTON, D.C.  
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Good morning, Madame Chair and Members of the Committee. I am Dr. William T. Hogarth, Assistant Administrator for NOAA's National Marine Fisheries Service (NOAA Fisheries). I appreciate this opportunity to discuss the Magnuson-Stevens Act National Standards and recent developments in the Federal management of New England groundfish. I am very much aware of the importance of this historic fishery, both to the fishing communities of New England and to the Nation, and I am committed to seeing it rebuilt to its full potential.

There are several issues that I will cover in my testimony, including NOAA Fisheries' overall implementation of the National Standards, as well as the application of the National Standards relative to the development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). This amendment is being developed by the New England Fishery Management Council (Council) to bring the FMP into compliance with the Magnuson-Stevens Act, and to rebuild the groundfish stocks in New England. I will also discuss other issues that have been raised throughout the public discussion of Amendment 13.

**THE SUSTAINABLE FISHERIES ACT (SFA) AMENDMENTS AND THE NATIONAL STANDARDS**

NOAA Fisheries has made a major and sustained effort over the last 6 years to implement all aspects of the 1996 SFA amendments to the Magnuson-Stevens Act, and I believe that we have succeeded in bringing our regulations and fishery management plans into conformity with Congressional intent. Some of the most important changes brought about by the SFA were: (1) stricter provisions relating to overfishing and rebuilding of overfished stocks; (2) requirements to reduce bycatch; (3) new requirements regarding essential fish habitat (EFH); and (4) the addition of three new National Standards.

With the passage of the SFA, there are now 10 National Standards in the Magnuson-Stevens Act, all of which must be carefully considered in the development and approval of any fishery management action taken under the authority of that Act. However, several of the National Standards -- National Standard 1 (NS1), National Standard 4 (NS4), and National Standard 8 (NS8) -- are of particular relevance to issues that have been raised publicly in the Council's development of Amendment 13, and I will focus my remarks on those.

During the last several years, NOAA Fisheries has expended considerable effort in reviewing and updating the guidelines for applying the National Standards to ensure that they are useful, clear, and consistent with requirements of the Magnuson-Stevens Act. NOAA Fisheries began a review of NS1 in the spring of 2003, and requested public comments on the need to clarify or modify the guidelines. NS1, which addresses overfishing and optimum yield, is a critical provision that guides the development and approval of decisions in all of our fishery management actions. The February 2003 advance notice of proposed rulemaking (ANPR) that was published in the Federal Register expressed our willingness to reconsider the NS1 guidelines in several important respects, including (1) the appropriate use of minimum stock size thresholds, (2) the inclusion of environmental conditions in determining rebuilding targets, and (3) the calculation of rebuilding timeframes for overfished stocks. As noted in the ANPR, the National Standards have not changed since the passage of the SFA; we seek only to clarify, simplify, and amplify our guidelines, as appropriate. NOAA Fisheries is also studying the need for changes in the NS2 guidelines. NS2 requires the use of the "best scientific information available," and a formal review by the National Research Council (National Academy of Sciences) is currently underway.

During the recent public hearings on Amendment 13, many comments have referred to NS8, which addresses impacts of management measures on fishing communities. This standard has also been the subject of much recent study and review, and I believe that NOAA Fisheries is in a much better position now to assess the impacts of management actions on fishing communities than we were in the years immediately after passage of the SFA. We have bolstered our social science program, improved the collection of social and economic data, and have conducted training and workshops on how best to assess the impacts of management measures on small business entities and fishing communities.

At the same time, we acknowledge that data limitations have the potential to affect the robustness of our socio-economic analyses. A general and persisting problem is the lack of adequate, up-to-date, and comprehensive information, particularly fishery and fishery dependent community economic and social data. For example, we do not have adequate information on the costs and earnings of fishing and processing operations. Statutory restrictions still protect confidential and proprietary business information and processors' economic data. Although we have worked hard to do a better job in this area, without this information, a more thorough analyses of the socio-economic impacts on fishermen and their communities will be difficult to develop.

As evidence of the progress NOAA Fisheries and the Councils have made in implementing the SFA and complying with all of the National Standards, we now have approved rebuilding plans in place for practically all federally managed fisheries that require them. In the last several years, the overall trends in stock biomass have been positive, and overfishing has been ended for 26 stocks. Notably, some of these successes have occurred in federally managed fisheries that significantly affect fishermen in New England: Silver hake in the Gulf of Maine and northern Georges Bank have been rebuilt; Georges Bank and Mid-Atlantic scallops have recovered impressively; North Atlantic swordfish is no longer overfished; Gulf of Maine haddock is no longer being subjected to overfishing; Atlantic pollock has shown significant improvement; and the summer flounder fishery has rebounded. Over the past 6 years, the implementation of rebuilding programs, as required by the SFA, has yielded very tangible benefits to the New England region, as well as to other regions of the country. I am confident that fishery management works.

### **BACKGROUND ON AMENDMENT 13**

As I am sure you are aware, NOAA Fisheries has been involved in the Conservation Law Foundation (CLF) et al. v. Evans et al. litigation regarding the management of the New England groundfish fishery for several years. After a ruling in favor of the Plaintiffs in December 2001, the U.S. District Court for the District of Columbia (Court) ordered the parties to engage in discussions to address issues relating to the remedial phase of the litigation. In an effort to respond to the Court's requirements, NOAA Fisheries entered into a Settlement Agreement with a majority of the parties to the lawsuit. The Settlement Agreement, which was ordered to be implemented by the Court, requires NOAA Fisheries to implement a series of interim rules to reduce overfishing on groundfish stocks in the short term. In addition, the Settlement Agreement calls on NOAA Fisheries to work with the Council in its development of Amendment 13, for managing the New England groundfish fishery in the long term. NOAA fisheries quickly put in place the interim measures necessary to reduce overfishing while Amendment 13 was being fully developed by the Council. Through that timely action, we brought fishing mortality down and reduced latent effort in the fishery, which made good progress in stabilizing the fishery. Without such action, the measures in Amendment 13 would have had to reduce fishing mortality even more.

The Council voted at its July 2003 meeting to approve the Amendment 13 document, including the Draft Supplemental Environmental Impact Statement (DSEIS), to go out for public comment. Public hearings were completed on September 30, 2003, and the public comment period closed on October 15, 2003. The Council and NOAA Fisheries are on track to meet the May 1, 2004, Court-ordered implementation deadline. It is imperative that we continue to support the Council in its effort to complete Amendment 13, to meet the terms of the Court order and to continue the rebuilding of the New England groundfish stocks.

I am very proud of the efforts that the Council and NOAA Fisheries have made in working on this very complex and important amendment. The fact that we are still in a position to meet the deadline is a testament to the hard work that many, many people, including members of the affected public, have contributed to this process.

## **CONDITION OF THE NEW ENGLAND GROUND FISH FISHERY**

Although much of the New England groundfish fishery, consisting of 19 managed stocks, has been rebuilding steadily in recent years, several stocks remain at very low levels. Overfishing is still occurring on 8 of 18 assessed stocks, and current fishing mortality rates for some of these stocks are more than twice the level that defines overfishing.

Had more effective management actions been taken in the mid-1990s to end overfishing and start the rebuilding of all of the overfished groundfish stocks as required by the SFA, the current situation would not be quite so difficult. Important progress has been made in the last several years, but that progress has been somewhat uneven. Although catches from the entire groundfish complex increased by 40 percent from 1996 to 2002, catches of the 10 stocks that are not currently overfished increased by 132 percent. In contrast, catches of the 8 stocks that are still overfished increased by only 3 percent during that time. In other words, virtually the entire increase in groundfish catches over that period was driven by improved harvests of the 10 stocks that are no longer subject to overfishing. During the same period, the aggregate biomass of these 10 stocks increased threefold, while the biomass of the stocks that were still overfished increased much more slowly.

If overfishing of all groundfish stocks had been eliminated earlier, consistent with the SFA, the landings and biomass of the eight overfished stocks would have increased significantly compared to current levels. This is supported by the increases in spawning stock biomass and yield per recruit that have resulted from reduced fishing mortality rates, and from improved fishing selection patterns that have resulted from larger minimum mesh sizes and other gear modifications. Due to better management, most stocks for which overfishing was eliminated have experienced significant improvement in recruitment, which is critical for allowing them to rebuild to their full potentials. Since these are living resources that are being managed, it will take time and additional short-term reductions in fishing effort to reach these rebuilt levels. However, I am confident that once the fishery is managed consistent with the requirements of the Magnuson-Stevens Act, the expected long-term gains can be achieved. Our economic analyses clearly demonstrate that such rebuilding will be beneficial to the fishing communities that depend on the groundfish fishery.

## **BALANCING THE GOALS OF THE NATIONAL STANDARDS**

Amendment 13 is intended to achieve statutory rebuilding targets and deadlines, to reduce bycatch in the New England groundfish fishery, to consider and address any adverse impacts of fishing on EFH, and to conform with all of the other provisions of the Magnuson-Stevens Act and other applicable law. Any proposed conservation and management measures must be consistent with all 10 of the National Standards to be approvable under the Act.

I believe there is a reasonable range of alternatives proposed in Amendment 13. We have worked hard with the Council to find creative solutions to difficult fishery problems within the scope of the law. During the development of Amendment 13, we explored with the Council such ideas as establishing the start of the rebuilding periods upon implementation of Amendment 13; a uniform start date for rebuilding periods; and the use of harvest rate targets higher than  $F_{\text{rebuild}}$  for the beginning years of the rebuilding plan. We also assisted the Council in the development of an adaptive rebuilding strategy. Our objective was, and still is, supporting the Council in developing a workable management regime for this fishery that will restore it to its full potential, simultaneously minimizing the short term adverse impacts on the industry and fishing communities.

Some critics of the four existing alternatives in the draft Amendment 13 document believe that the proposed measures were crafted solely to address NS1 (overfishing and optimum yield), at the expense of consideration of the other National Standards, particularly NS4 (fair allocations) and NS8 (impacts on fishing communities). As a result, allegations have been made that the Amendment 13 alternatives would create an “imbalance” in the administration of NS1, as opposed to NS4 and NS8.

Based upon our preliminary review, the existing alternatives in Amendment 13 appear to be consistent with NS4. This standard states generally that “(c)onservation and management measures shall not discriminate between residents of different States” and, more precisely, deals with “fishing privileges,” or “allocations.” The groundfish fishery occurs off the coasts of many states but, as a practical matter, certain overfished groundfish stocks reside mainly in specific locations that are closer to some states and communities than to others. It is to be expected, then, that restrictive measures to rebuild those stocks will have the greatest impact on those nearby. Virtually any conservation and management measure designed to address overfishing must consider where and when the most benefits can be achieved (for example, to protect spawning concentrations, nursery areas, etc.). Though such measures may differentially impact fishermen from certain areas or ports, they do not constitute discrimination, but effective and necessary science-based management.

The analyses and alternatives in Amendment 13 consider impacts on fishing communities, as required by NS8. The relative priorities of NS1 and NS8 are clarified in the language of the statute, the regulatory guidance, and recent litigation. The Magnuson-Stevens Act states that implementation of NS8 must be “consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks).” Even more explicitly, 50 CFR 600.345 advises that “(d)eliberations regarding the importance of fishery

resources to affected fishing communities ... must not compromise the achievement of conservation requirements and goals of the FMP.” Many recent court decisions dealing with NS8 challenges have concluded that, while NOAA Fisheries is required to comply with the NS8 guidelines, such compliance cannot compromise the achievement of conservation requirements and goals of an FMP, as required by NS1. Moreover, these courts have supported NOAA Fisheries’ position that, although the agency is required to consider the economic effects of management measures, the conservation requirements of NS1 should take precedence over the requirements of NS8. In particular, the Court of Appeals for the D.C. Circuit’s decision in the 2000 NRDC v. Daley summer flounder litigation, supports this view, stating that “the Service must give priority to conservation measures. It is only when two different plans achieve similar conservation measures that the Service takes into consideration adverse economic consequences.” The mandate of NOAA Fisheries and the Council is to comply with NS1 by preventing overfishing for the long-term production of sustainable optimum yield from the groundfish fishery, and to do so in a way that takes into account the importance of these fishery resources to fishing communities.

Taking decisive action on fishery management measures now, while minimizing negative impacts on fishing communities, is the best and most effective means to ensure that fishermen and fishing communities can function viably in the future. By contrast, any significant relaxation of the proposed management actions would risk postponing or even preventing stock recovery, thereby forgoing the benefits of a fully rebuilt fishery.

The mandate of NOAA Fisheries and the Council, therefore, is to ensure that each of the National Standards is taken into consideration during the development of a fishery management action. However, NOAA Fisheries and the Council are required to do so in a way that does not compromise the achievement of conservation requirements and goals of an FMP, as required by NS1.

## **ECONOMIC IMPACTS OF THE AMENDMENT 13 OPTIONS**

All of our constituents, including commercial and recreational users and other interested parties, have engaged in the debate over the potential economic impacts of Amendment 13. Some have suggested that the projected longer-term economic benefits that will result from the rebuilt stocks do not justify potential short-term sacrifices. In our view, the need for substantial reductions in fishing effort to achieve the rebuilding targets and timetables is indisputable. Lower levels of fishing effort are necessary to end overfishing on some stocks, to rebuild the fisheries, and to create the conditions for increased revenues and improved economic viability in future years. Only with recovered and sustainable resources can we ensure and stabilize the fishery’s infrastructure and participation. But even with Amendment 13 measures in place, under any of the alternatives, gross revenues to the fishery are projected to increase over their present level or to essentially remain the same from 2003 to 2004.

The economic benefits associated with the alternatives in Amendment 13 are substantial. Based on our best assessments, once most of these stocks are rebuilt, the average annual revenues are estimated to be \$30 to \$40 million higher than under the No Action alternative. In fact, under the rebuilding alternatives in Amendment 13, projected revenues will be greater than under the projected No Action level within just 2 years. By 2014, after a decade of rebuilding, cumulative revenues are expected to exceed the estimated No Action level by more than \$100 million. Even more dramatically, cumulative revenue gains over the entire rebuilding period will be more than \$2.6 billion, and sustained U.S. landings of New England groundfish will increase threefold, to over 320 million pounds. These are significant gains that will increase overall benefits to the New England fishing industry and coastal areas for years to come.

Our economic analyses, particularly the long-term projections, cannot tell us which vessels and which shore-side businesses will continue to operate in the future. However, history has shown that, in spite of significant management actions that reduced groundfish landings, such as Amendments 5 and 7 to the FMP, vessels do continue to fish, and processors continue to process fish. The groundfish fishery is only one of several important fisheries that are supported by the shoreside infrastructure. Though groundfish are very important to many vessels, it is only one source of revenue for the majority of them. Therefore, while Amendment 13 may result in temporary reductions in groundfish activity, it will not remove all business opportunities for the great majority of vessels, processors, or other fishing-related infrastructure.

We acknowledge the questions that have been raised regarding the quality of our economic analyses and projections of long-term economic impacts and are seriously considering initiating an independent peer review to examine and comment on the quality, reliability, and comprehensiveness of the economic analyses. I would be happy to report to Congress as soon as we decide how best to carry out this independent review.

## **ANOTHER ALTERNATIVE UNDER AMENDMENT 13?**

Amendment 13 currently includes a wide range of management measures that were developed over the course of several years. Four rebuilding alternatives are included in the Amendment 13 public hearing document:

1. Reductions in fishing effort, i.e., days-at-sea (DAS) allocated;
2. Combined reductions in fishing effort (DAS), additional restrictions on gear, and a hard Total Allowable Catch (TAC) limit;
3. Area management, focusing the most restrictive measures on specific areas (e.g., inshore Gulf of Maine or Western Georges Bank), including hard TACs; and
4. Hard TACs as the primary measure.

In summary, the first alternative relies on effort management through restrictions on DAS. Alternatives two through four make use of hard quotas as either the primary management

measure or as a backstop to ensure that the fishing mortality objectives are met. All four alternatives include several subsidiary options. In our judgment, these alternatives and their associated options provide a broad range of measures with a fair amount of flexibility from which the Council may choose to achieve the necessary resource management goals.

These alternatives have been developed through a public process over the course of several years, and reflect input from the industry, academics, the environmental community, and other members of the public. Many ideas were explored, and some were incorporated and modified, as necessary, to achieve the desired and necessary objectives. Other suggestions were not accepted because they were unworkable, overly burdensome, or otherwise unsuitable. Additionally, NOAA holds the view that there is still room for flexibility, provided that any new alternative meet the following two conditions:

(1) Any new alternative must be constructed from, and fall within the scope of, alternatives that have already been assessed in the DSEIS. It would not be possible to develop and analyze an entirely new alternative (i.e., one whose impacts have not been analyzed or considered by the public), and still meet the Court-ordered deadline of May 1, 2004, for implementation of Amendment 13.

(2) The management measures in any viable new alternative would have to meet the fishery management and conservation goals of the FMP, especially with respect to rebuilding, the primary objective of Amendment 13, as well as all other provisions of the Magnuson-Stevens Act and other applicable law.

Thus, it may be possible for the Council to consider a new alternative submitted during the public comment period, as long as that alternative is within the information and analytical framework of the DSEIS. NOAA Fisheries will continue to work side-by-side with the Council, to provide as much flexibility as possible in the limited time available to meet the Court-ordered implementation deadline, and to continue rebuilding the New England groundfish fishery.

## **FUTURE ACTIONS IN THE FISHERY**

The implementation of Amendment 13 is not the end of our work. For example, I see opportunities for future changes in the management of the New England groundfish fishery through the potential of gear research. We all acknowledge the need for work to reduce bycatch and improve gear selectivity in this fishery. NOAA Fisheries believes we have a significant opportunity to address some of the problems in this fishery by working cooperatively with the fishing industry to utilize their extensive skill and expertise in developing gear that meets current and future regulatory requirements. Over the past 3 years, NOAA Fisheries has worked with the industry on 37 cooperative research projects, funded with \$5.3 million. Through this type of work, if we can develop gear that reduces bycatch and that fishes more selectively, it will be possible to increase harvests of healthy stocks while allowing the weaker stocks to continue to



rebuild. To facilitate this kind of research, NOAA Fisheries is considering issuing a rule that would propose that we distinguish research that is designed to improve gear selectivity for management purposes, such as reducing bycatch, from gear testing that is simply designed to improve how the gear captures fish. Depending on the outcome of that rulemaking, gear research may be able to proceed with much less delay.

Finally, I suggest that we all need to think more creatively about the overall direction in which we would like to see the New England groundfish fishery move in future years. What is our vision of what this traditional fishery should look like in 10 years, or 20 years? Should it be a much smaller fishery, with fewer but more economically viable vessels? Or should it be a fishery in which a large number of boats operate, and all or most of the ports and communities continue to participate at or near historic levels? Additionally, what are the most appropriate means for accommodating recreational and conservation interests in these fisheries?

Depending on our answers to these questions, and our vision of the future for this fishery, long-term remedies could include a wide variety of programs, such as limited entry, individual fishing quotas, cooperatives, community-based arrangements, trading and leasing of effort quotas, and vessel buyouts. Perhaps the Council could fashion a New England groundfish rationalization plan that combines various management tools. The alternatives and options under Amendment 13, while critically important, probably do not provide the whole answer. We will continue to work with the Council, the states, and all our constituents as we address these issues. But I believe that the tools do exist to promote the recovery of the New England groundfish. Working together, I think we can identify the right mix of programs that will get the job done.

I thank you for your interest in these challenging issues, and will be happy to address your questions.